

**STATE - GENERAL TERMS AND CONDITIONS****1. Definitions.** The words and phrases listed below, as used in the Contract, shall each have the following definitions:

- "*Central Contract Services*" means the DSHS Office of Legal Affairs, Central Contract Services, or successor section or office.
- "*Contract*" means the entire written agreement between the State of Washington Department of Social and Health Services and the Contractor, including the Special Terms and Conditions, these General Terms and Conditions, all other attached or referenced Exhibits, and all other documents incorporated by reference.
- "*Contracting Officer*" means the Contracts Administrator, or successor, of Central Contract Services or successor section or office.
- "*Contractor*" means the individual or entity performing services pursuant to the Contract and includes the Contractor's owners, members, officers, directors, partners, employees and/or agents unless otherwise stated in the Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees and/or agents.
- "*DSHS*" or "*the department*" or "*the Department*" means the Department of Social and Health Services of the State of Washington and its employees and authorized agents.
- "*General Terms and Conditions*" means this document.
- "*RCW*" means the Revised Code of Washington. All references in the Contract to RCW chapters or sections shall include any successor, amended, or replacement statute.
- "*Subcontract*" means a separate contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations which the Contractor is obligated to perform pursuant to the Contract.
- "*WAC*" means the Washington Administrative Code. All references in the Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation.

**2. Advance Payments Prohibited.** DSHS shall not make any payments in advance or anticipation of the delivery of goods or services provided pursuant to the Contract.**3. Amendment of Contract and Deobligation of Funds:**

- a. The Department or Contractor may from time to time request changes in the project. It is mutually agreed and understood that no alteration or variation of the terms of this contract shall be valid unless a contract amendment, signed by authorized representatives of the Parties hereto, is made. Changes in budget items not resulting in an increase in the State funds, time extensions granted for the completion of performance, and change in the scope of Contractor's project not altering the basic project purpose may be authorized by the Department.
- b. A contract amendment shall not be necessary for budget revisions amounting to less than ten percent (10%) of the total grant award or \$1,000 (cumulative total to be moved within budget categories), whichever is less. As soon as the Contractor identifies a change in expenditures which will require a budget amendment, a request for revision must be submitted to the Office of Juvenile Justice.
- c. If, after the completion of the basic project and the Department's receipt of the final financial report, there are funds allocated but not required for the project, such funds shall be deobligated and no longer available for reimbursement. Deobligation shall occur when the Department sends a written notice, specifying such deobligation to the Contractor.
- d. Only the Contracting Officer, or his/her delegate by written delegation made prior to action, shall have the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Contracting Officer.

**4. Assignment.** The Contractor may not assign the Contract, or any rights or obligations contained in the Contract, to a third party.**5. Background Checks.** Contractors and each of their employees, subcontractors and/or volunteers, who may have unsupervised access to clients, shall have a cleared and approved current criminal history and background check.

## GENERAL TERMS AND CONDITIONS (CONTINUED)

- 6. Compliance with Applicable Law.** At all times during the term of the Contract, the Contractor shall comply with all applicable local, state and federal laws, regulations and rules.
- 7. Confidentiality of Client Information.** The Contractor shall not use or disclose any information concerning any DSHS client for any purpose not directly connected with the administration of the Contractor's responsibilities under the Contract except by prior written consent of the DSHS client.
- 8. Contractor Certification Regarding Ethics.** The Contractor certifies that the Contractor is in compliance with Chapter 42.52 Revised Code of Washington, Ethics in Public Service, and will comply with Chapter 42.52 Revised Code of Washington throughout the term of the Contract.
- 9. Contractor Not an Employee of DSHS.** For purposes of the Contract, the Contractor acknowledges that the Contractor is an independent contractor and not an officer, employee, or agent of DSHS or the State of Washington. The Contractor shall not hold the Contractor or any of the Contractor's employees out as, nor claim status as, an officer, employee or agent of DSHS or the State of Washington. The Contractor shall not claim for the Contractor or the Contractor's employees any rights, privileges or benefits which would accrue to an employee of the State of Washington. The Contractor shall indemnify and hold DSHS harmless from all obligations to payor withhold federal or state taxes or contributions on behalf of the Contractor or the Contractor's employees unless otherwise specified in the Contract.
- 10. Disputes.** Either party who has a dispute concerning the Contract may request an adjudicative proceeding. A request for an adjudicative proceeding must:
- a. be *received* by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501 no later than 28 days after Contract expiration or termination;
  - b. be sent by certified mail (return receipt) or other manner that proves OFR received the request;
  - c. include a statement explaining the party's position; and
  - d. include a copy of the Contract.
- Timely and complete requests may be scheduled for a formal hearing by the Office of Administrative Hearings. The Contractor may be offered a pre-hearing/alternative dispute resolution conference in an attempt to resolve the dispute prior to the hearing. Disputes involving nursing home rate and the contract procurement process shall not be entitled to an adjudicative proceeding. The amount of any rate set by WAC, law, regulation, or DSHS policy is not disputable.
- 11. Execution, Amendment and Waiver.** The Contract shall be binding on DSHS only upon signature by DSHS. The Contract may be altered, amended, or waived by a written amendment executed by both parties, except that only the Contracting Officer or the Contracting Officer's designee has authority to amend or waive these General Terms and Conditions on behalf of DSHS.
- 12. Governing Law and Venue.** The Contract shall be governed by the laws of the State of Washington. In the event of lawsuit involving the Contract, venue shall be proper only in Thurston County, Washington.
- 13. Indemnification and Hold Harmless.** The Contractor shall be responsible for and shall indemnify and hold DSHS harmless from all liability resulting from the acts or omissions of the Contractor and any subcontractor.
- 14. Insurance Language: The Contractor shall at all times comply with the following insurance requirements.**
- a. General Liability Insurance  
The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Department of Social & Health Services (DSHS), and elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.
  - b. Business Automobile Liability Insurance  
The Contractor shall maintain a Business Automobile Policy on all vehicles used to transport clients, including vehicles hired by the Contractor or owned by the Contractor's employees, volunteers or others, with the following

## GENERAL TERMS AND CONDITIONS (CONTINUED)

minimum limits: \$1,000,000 per accident combined single limit. The Contractor's carrier shall provide DSHS with a waiver of subrogation or name DSHS as an Additional Insured.

- c. Professional Liability Insurance (PL)  
The Contractor shall maintain Professional Liability Insurance or Errors & Omissions insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; Aggregate - \$2,000,000.
- d. Worker's Compensation  
The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and DSHS shall not be held responsible for claims filed for Worker's Compensation under RCW 51 by the Contractor or its employees under such laws and regulations.
- e. Employees and Volunteers  
Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.
- f. Subcontractors  
The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under the Contract.
- g. Separation of Insureds  
All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision.
- h. Insurers  
The Contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a Best's Reports' rating of B++, Class VII, or better. Surplus Lines insurance companies will have a rating of A-, Class VII, or better.
- i. Evidence of Coverage  
The Contractor shall submit Certificates of Insurance to the DSHS point of contact located on page one of the contract for each coverage required of the Contractor under the Contract. The Certificate shall identify the DSHS Central Contract Services, P O Box 45811, Olympia, Washington 98504-5811 as Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance. The Contractor is not required to submit to DSHS copies of Certificates of Insurance for personal automobile insurance required of the Contractor's employees and volunteers under the contract.  
  
The Contractor shall maintain copies of Certificates of Insurance for each subcontractor as evidence that each subcontractor maintains insurance as required by the Contract.
- j. Material Changes  
The insurer shall give DSHS Central Contract Services, 45 days advance written notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give DSHS 10 days advance written notice of cancellation.
- k. General  
By requiring insurance, the State of Washington and DSHS do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State and DSHS in this contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance of self-insurance programs afforded to or maintained by the State. *If the Contractor is a county or municipality and is self-insured or a member of an authorized risk-pool, the Contractor shall only be required to acquire and maintain additional insurance coverage if necessary to supplement the Contractor's self-insurance or risk-pool amount to meet the minimum limits described above. If a county or municipality is self-insured and purchases additional coverage, any and all policies must name DSHS and the State of Washington as additional insured.*

### 15. Inspection; Maintenance of Records.

- a. During the term of the Contract and for one year following termination or expiration of the Contract, the Contractor shall give reasonable access to the Contractor's place of business and client and Contractor records to DSHS and to any other employee or agent of the State of Washington or the United States of America for the purpose of inspecting the

## GENERAL TERMS AND CONDITIONS (CONTINUED)

Contractor's place of business and its records, and monitoring, auditing, and evaluating Contractor performance and compliance with applicable laws, regulations, rules, and the Contract.

b. During the term of the Contract and for six years following termination or expiration of the Contract, the Contractor shall maintain records sufficient to:

- (1) Document performance of all acts required by statute, regulation, rule, or the Contract;
- (2) Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, and performance; and
- (3) Demonstrate accounting procedures, practices, and records which sufficiently and properly document the Contractor's invoices to DSHS and all expenditures made by the Contractor to perform as required by the Contract.

**16. Nondiscrimination.** The Contractor shall comply with all applicable local, state, and federal nondiscrimination laws, regulations, rules, and ordinances.

**17. Non-Supplanting Certification for Governmental Agencies:** By signature of its authorized representative on page 1 of the GRANT APPLICATION, the Applicant certifies that its non-federal expenditures for juvenile justice activities, if any, for the project period, are at least as great as for the preceding year, and budget figures supporting this certification are available on request (if certification cannot be made, the applicant must attach a full explanation.)

**18. Notice of Overpayment.** If the Contractor receives a Vendor Overpayment Notice or a letter communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:

- a. be received by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within 28 days of service of the notice;
- b. be sent by certified mail (return receipt) or other manner that proves OFR received the request because the Contractor may be required to prove that the request was received by OFR;
- c. include a statement as to why the Contractor thinks the notice is incorrect; and d. include a copy of the overpayment notice.

Timely and complete requests will be scheduled for a formal hearing by the Office of Administrative Hearings. The Contractor will be offered a pre-hearing/alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within 28 days of service of a Vendor Overpayment Notice or other overpayment letter will result in an overpayment debt against the Contractor. DSHS may charge the Contractor interest and any costs associated with the collection of this overpayment. DSHS may collect an overpayment debt through lien, foreclosure, seizure and sale against the Contractor's real or personal property, order to withhold and deliver, or any other collection action available to DSHS to satisfy the overpayment debt.

**19. Obligation to Ensure Health and Safety of DSHS Clients.** The Contractor shall ensure the health and safety of any DSHS client for whom services are provided by the Contractor.

**20. Order of Precedence.** In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence, in the following order, to:

- Applicable federal, state, and local law, regulations, and rules;
- Approved Budget and Special Conditions (form JJ2);
- These General Terms and Conditions; and
- Any other Exhibit, provision, document, or material attached or incorporated by reference.

**21. Ownership of Material.** Material created by the Contractor shall be owned by DSHS, and shall be "works for hire" as defined by the U.S. Copyright Act of 1976. This material included, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; DVDs; and/or training materials. Material which the Contractor uses to perform the Contract but which is not created for or paid for by DSHS is owned by

## GENERAL TERMS AND CONDITIONS (CONTINUED)

the Contractor; however, DSHS shall have perpetual license to use this material for DSHS internal purposes at no charge to DSHS.

When capital assets or equipment (those costing \$1,000 per unit or more) acquired with State funds are sold or cease to be used for Department approved juvenile justice purposes, the Contractor shall pass the resale to the Department in the same proportion as State Funds were utilized to acquire such property.

### 22. Reporting Requirement:

- a. Financial Reports. Financial reports must be submitted on the JJ-3 form. Financial reports may be submitted monthly but are required at least quarterly for periods ending March 31, June 30, September 30, and December 31. Reports are due at the Department (15) days following the end of the quarter and must be submitted even if there are no expenditures for the period. **The final financial report must be submitted no later than 75 days after the contract end date.**
- b. Progress Reports. Progress reports must be submitted on the JJ-4 form. Progress reports may be submitted monthly but are required at least quarterly for periods ending March 31, June 30, September 30, and December 31. Reports are due fifteen (15) days following the end of the quarter and must be submitted even if there was no project activity during the period. Progress reports become delinquent sixteen (16) days following the end of the quarter. No reimbursement shall be made to projects with delinquent progress reports.
- c. Evaluation Report. An evaluation report, if required by the agreement, must be submitted no more than sixty (60) days after the end of the project period. A two page executive summary must be included in the evaluation report.

Three copies of the evaluation report must be submitted to the OJJ. Payment of the final financial report cannot be made until the required evaluation report is accepted by the Office of Juvenile Justice.

**23. Retainage.** The Department may retain an amount not exceeding ten percent (10%) of the total State funds awarded pending receipt of the final report and/or evaluation.

**24. Severability; Conformity.** The provisions of the Contract are severable. If any provision of the Contract, including any provision of any document incorporated by reference, is held invalid by any court, that invalidity shall not affect the other provisions of the Contract and the invalid provision shall be considered modified to conform to existing law.

**25. Single Audit Act Compliance.** If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular 133-A, the Contractor shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance numbers. The Contractor shall make the Contractor's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, DSHS, and the Washington State Auditor's Office. The Contractor shall incorporate OMB Circular A-133 audit requirements into all contracts between the Contractor and its subcontractors who are subrecipients. The Contractor shall comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation.

If the Contractor expends \$300,000 or more in federal awards from any and/or all sources in any fiscal year beginning after June 30, 1996, the Contractor shall procure and pay for a single or program- specific audit for that year. Upon completion of each audit, the Contractor shall submit to the DSHS Contact named in this Contract the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.

**26. Subcontracting.** Except as otherwise provided in the Special Terms and Conditions of the Contract, the Contractor may not subcontract any of the contracted services without the prior, written approval of DSHS as reflected in a written Amendment to the Contract. The Contractor shall be responsible for the acts and omissions of any subcontractor.

**27. Termination Due to Change in Funding.** If the funds DSHS relied upon to establish the Contract are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, DSHS may immediately terminate the Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the notice of termination.

**28. Termination for Convenience.** The Contracting Officer may terminate the Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice. The Contractor may terminate the Contract for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to: Central Contract Services, PO Box 45811, Olympia, Washington 98504-5811. This provision shall not apply to personal service contracts pursuant to RCW 39.29.

## GENERAL TERMS AND CONDITIONS (CONTINUED)

**29. Termination for Default.** The Contracting Officer may terminate the Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:

- a. Failed to meet or maintain any requirement for contracting with DSHS;
- b. Failed to perform under any provision of the Contract;
- c. Failed to ensure the health or safety of any DSHS client for whom services are being provided under the Contract;
- d. Violated any applicable law, regulation, rule, or ordinance; and/or e. Otherwise breached any provision or condition of the Contract.

If the Contracting Officer terminates the Contract for default, DSHS shall be entitled to all remedies available at law or in equity, including consequential damages, incidental damages, legal fees, and costs. If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.

**30. Termination Procedure.** The following provisions shall survive and be binding on the parties in the event the Contract is terminated:

- a. The Contractor shall cease to perform any services required by the Contract as of the effective date of termination and shall comply with all instructions contained in the notice of termination.
- b. The Contractor shall immediately deliver to the DSHS Contact named in the Contract, or to his or her successor, all DSHS assets (property) in the Contractor's possession and any property produced under the Contract. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of termination of the Contract. Upon failure to return DSHS property within ten (10) calendar days of the Contract termination, the Contractor shall be charged with all reasonable costs of recovery, including transportation and attorney's fees. The Contractor shall protect and preserve any property of DSHS which is in the possession of the Contractor pending return to DSHS.
- c. DSHS shall be liable for and shall pay for only those services authorized and provided through the date of termination. DSHS may pay an amount agreed to by the parties for partially completed work and services, if work products are useful to or usable by DSHS.
- d. In the event of termination for default, DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability. The rights and remedies provided to DSHS in this paragraph are in addition to any other rights and remedies provided at law, in equity and/or under the Contract. The Contractor may request dispute resolution as provided in the Contract.
- e. The Contracting Officer may direct assignment of the Contractor's rights to and interest in any subcontract or orders placed to DSHS. DSHS may terminate any subcontract or orders, and settle or pay any or all claims arising out of the termination of such orders and subcontracts.

**31. Treatment of Assets Purchased by Contractor.** Except as provided in the Special Terms and Conditions of the Contract, title to all assets (property) purchased or furnished by the Contractor is vested in the Contractor and DSHS waives all claim of ownership to such property.

**32. Treatment of Client Assets.** Except as otherwise provided by court order, the Contractor shall ensure that any DSHS client for whom the Contractor is providing services under the Contract shall have unrestricted access to the client's personal property. The Contractor shall not interfere with the client's ownership, possession, or use of such property. Upon termination of the Contract, the Contractor shall immediately release to the client and/or DSHS all of the client's personal property.

**33. Treatment of DSHS Assets.** Except as otherwise provided in the Special Terms and Conditions of the Contract, title to all assets (property) purchased or furnished by DSHS for use by the Contractor during the Contract term shall remain with DSHS. During the term of the Contract, the Contractor shall protect, maintain, and insure all DSHS property in the Contractor's possession against loss or damage.

**34. Waiver of Default.** Waiver of any default on one occasion shall not be deemed to be a waiver of any subsequent default. Waiver of any breach or default of any provision of the Contract shall not be deemed to be a waiver of any subsequent breach, and shall not be construed to be a modification of the terms and conditions of the Contract.

**APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL**

*Modified: 06/19/09*